

## TITLE 5. CORPORATIONS

### STATE CORPORATION COMMISSION

#### Final Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Titles of Regulations: **5VAC5-30. Uniform Commercial Code Filing Rules (amending 5VAC5-30-20 through 5VAC5-30-70).**

**5VAC5-40. Administration of the Office of the Clerk of the Commission (amending 5VAC5-40-10).**

Statutory Authority: §§ 8.9A-526 and 12.1-13 of the Code of Virginia.

Effective Date: December 1, 2017.

Agency Contact: Joel Peck, Clerk of the Commission, State Corporation Commission, 1300 East Main Street, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9834, FAX (804) 371-9521, or email joel.peck@scc.virginia.gov.

Summary:

*The amendments (i) change fees charged by the Office of the Clerk for furnishing paper copies of State Corporation Commission records and the certification of those copies; (ii) allow the Office of the Clerk to charge and collect reasonable fees for providing records from a computer database, electronic data processing system, or any other structured collection of data or for abstracting or summarizing data or creating a record that does not already exist if the State Corporation Commission chooses to fulfill such a request; (iii) make numerous minor and technical changes; and (iv) change filing time for certain Uniform Commercial Code (UCC) records based on the type of delivery, payment methods, and the requirements for filing of UCC records previously refused by the filing office in error.*

AT RICHMOND, NOVEMBER 29, 2017

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. CLK-2017-00004

Ex Parte: In the matter of Adopting  
Revisions to the Rules Governing Administration of  
the Office of the Clerk of the Commission and  
Uniform Commercial Code Filing Rules

#### ORDER ADOPTING REGULATIONS

On October 11, 2017, the State Corporation Commission ("Commission") entered an Order to Take Notice of a proposal by the Commission to adopt regulations pursuant to §§ 12.1-20, 12.1-21.1, 12.1-21.2 and § 8.9A-526 of the Code of Virginia. The proposed regulations amend the rules regarding "Administration of the Office of the Clerk of the Commission" ("Clerk's Rules") as well

as the "Uniform Commercial Code Filing Rules" ("UCC Rules") under Title 5, Chapters 40 and 30, respectively, of the Virginia Administrative Code.

Among other amendments, the proposed regulations include changes to the fees charged by the Office of the Clerk for furnishing paper copies of Commission records and the certification of those copies. The proposed regulations also amend the Clerk's Rules to allow the Office of the Clerk to charge and collect reasonable fees for: (a) providing records from a computer database, electronic data processing system, or any other structured collection of data; or (b) for abstracting or summarizing data or creating a record that does not already exist, if the Commission chooses to fulfill such a request. Additionally, the proposed regulations include: (a) numerous minor and technical changes to the UCC Rules; and (b) changes regarding the filing time for certain UCC records based on the type of delivery, changes regarding payment methods, and the requirements regarding the filing of UCC records previously refused for acceptance by the filing office in error.

The Order to Take Notice and proposed regulations were published in the Virginia Register of Regulations on October 30, 2017, posted on the Commission's website, and sent to various interested parties. Interested parties were afforded the opportunity to file written comments or request a hearing on or before November 20, 2017. No comments or requests for a hearing were filed.

Following entry of the Order to Take Notice, several minor and stylistic amendments to the proposed regulations for the UCC Rules have been made. Those amendments are shown in the proposed regulations accompanying this Order Adopting Regulations ("Order") and the Commission is of the opinion that these amendments should be accepted.

NOW THE COMMISSION, upon consideration of the proposed regulations and applicable law, concludes that the proposed regulations, as amended, should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulations as amended, and attached hereto, are ADOPTED effective December 1, 2017.

(2) This Order and the attached regulations shall be posted on the Commission's website at <http://www.scc.virginia.gov/case>.

(3) The Commission's Division of Information Resources shall send a copy of this Order, including a copy of the attached regulations, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.

(4) This case is dismissed from the Commission's docket of active cases.

AN ATTESTED COPY HEREOF shall be delivered to the Clerk of the Commission, who shall forthwith mail or e-mail a copy of this Order, including a copy of the attached regulations, to any interested persons as he may designate.

#### **5VAC5-30-20. Definitions.**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Amendment" means a UCC record that amends the information contained in a financing statement. Amendments also include (i) assignments and (ii) continuation and termination statements.

"Assignment" means an amendment that assigns all or a part of a secured party's power to authorize an amendment to a financing statement.

"Continuation statement" shall have the meaning prescribed by § 8.9A-102(a)(27) of the Code of Virginia.

"File number" shall have the meaning prescribed by § 8.9A-102(a)(36) of the Code of Virginia.

"Filing office" means the Clerk's Office of the State Corporation Commission.

"Filing officer" means the Clerk of the State Corporation Commission.

"Filing officer statement" means a statement entered into the UCC information management system to ~~describe the correction of an error or inaccuracy made~~ explain an action by the filing office.

"Financing statement" shall have the meaning prescribed by § 8.9A-102(a)(39) of the Code of Virginia.

"Individual" means a natural person, living or deceased.

"Information statement" means a UCC record that indicates ~~that~~ a financing statement is inaccurate or wrongfully filed.

"Initial financing statement" means a UCC record containing the information required to be in an initial financing statement and that causes the filing office to establish the initial record of existence of a financing statement.

"Organization" means a legal person that is not an individual.

"Personal identifiable information" shall have the meaning prescribed by § 12.1-19 B of the Code of Virginia.

"Remitter" means a person who ~~tenders~~ delivers a UCC record to the filing office for filing, whether the person is a filer or an agent of a filer responsible for ~~tendering~~ delivering the UCC record for filing. "Remitter" does not include a person responsible merely for the delivery of the UCC record to the filing office, such as the postal service or a courier service but does include a service provider who acts as a filer's representative in the filing process.

"Secured party of record" shall have the meaning prescribed by § 8.9A-511 of the Code of Virginia.

"Termination statement" shall have the meaning prescribed by § 8.9A-102(a)(80) of the Code of Virginia.

"Through date" means the most recent date that all submissions for a specified day have been indexed in the UCC information management system.

"UCC" means the Uniform Commercial Code - Secured Transactions (§ 8.9A-101 et seq. of the Code of Virginia).

"UCC information management system" means the information management system used by the filing office to store, index, and retrieve information relating to financing statements.

"UCC record" means an initial financing statement, an amendment, and an information or a filing officer statement, and shall not be deemed to refer exclusively to paper or paper-based writings.

### **5VAC5-30-30. General filing and search requirements.**

A. UCC records may be ~~tendered for filing at~~ delivered to the filing office for filing as follows:

1. By personal delivery, at the filing office street address;
2. By courier delivery, at the filing office street address;
3. By postal delivery, to the filing office mailing address; or

4. By electronic delivery method provided and authorized by the filing office.

B. The filing time for a UCC record delivered to the filing office for filing by personal, ~~or courier, or postal~~ delivery is the time the UCC record is date-and-time stamped by the filing office even though the UCC record may not yet have been accepted for filing and may be subsequently rejected. The filing time for a UCC record delivered to the filing office for filing by postal delivery is the next close of business following the time of delivery (even though the UCC record may not yet have been accepted for filing and may be subsequently rejected). A UCC record delivered to the filing office for filing after regular business hours or on a day the filing office is not open for business will have a filing time of the close of business on the next day the filing office is open for business. The filing time for a UCC record delivered to the filing office for filing by authorized electronic delivery method is the date and time the UCC information management system receives the UCC record and determines that all the required elements of the transmission have been received in the required format.

C. UCC search requests may be delivered to the filing office by personal, courier, or postal delivery, or by electronic delivery method provided and authorized by the filing office.

#### **5VAC5-30-40. Forms, fees, and payments.**

##### **A. Forms.**

1. The filing office shall only accept forms for UCC records that conform to the requirements of this chapter.
2. The forms approved by the International Association of Commercial Administrators as they appear on the filing office's website (<http://www.scc.virginia.gov/clk/uccfile.aspx>) shall be accepted.
3. The filing office may approve other forms for acceptance, including additional forms approved by the International Association of Commercial Administrators.

##### **B. Fees.**

1. The fee for filing and indexing a UCC record is \$20.
2. The fee for submitting a UCC search request is \$7.00.
3. ~~The fee for furnishing UCC search copies is \$.50 for each page. The fee for affixing the seal of the commission to a certificate is \$3.00. There is no fee for furnishing a [ paper ] copy of a UCC record of 25 or fewer pages. The fee for furnishing a [ paper ] copy of a UCC record that exceeds 25 pages is \$10.00. For certifying a copy, the fee for the certificate and affixing thereto the seal of the commission or a facsimile thereof is \$6.00.~~

C. Methods of payment. Filing fees and fees for services provided under this chapter may be paid by the following methods:

1. Payment ~~in~~ by debit or credit card of a type approved by the filing office and cash shall be accepted if paid in person at the filing office.
2. Personal ~~checks check~~, cashier's ~~checks check~~ and money ~~orders order~~ made payable to the State Corporation Commission or Treasurer of Virginia shall be accepted for payment if drawn on a bank acceptable to the filing office or if the drawer is acceptable to the filing office.
3. Payment by debit or credit card acceptable to of a type approved by the filing office ~~or electronic check may shall~~ be accepted for the filing or submission of ~~documents a document~~ delivered to the filing office for filing by authorized electronic delivery method.

4. The filing office may accept payment via electronic funds under National Automated Clearing House Association (NACHA) rules from remitters who have entered into appropriate NACHA-approved arrangements for such transfers and who authorize the relevant transfer pursuant to such arrangements and rules.

**D. Overpayment and underpayment policies.**

1. The filing office shall notify the remitter of the amount of any overpayment exceeding \$24.99 and send the remitter the appropriate procedure and form for requesting a refund. The filing office shall refund an overpayment of \$24.99 or less only upon the written request of the remitter. A request for a refund shall be delivered to the filing office within 12 months from the date of payment.

2. Upon receipt of a UCC record with an insufficient filing fee, the filing office shall return the UCC record to the remitter with a notice stating the deficiency and may retain the filing fee.

E. Uncollected filing fee payment. A filing may be voided by the filing office if the filing fee payment that is submitted by the remitter is dishonored, declined, refused, reversed, charged back to the commission, returned to the commission unpaid, or otherwise rejected for any reason by a financial institution or other third party, and after notice from the filing office, the remitter fails to submit a valid payment for the filing fee and any penalties.

F. Federal liens. A notice of lien, certificate and other notice affecting a federal tax lien or other federal lien presented to the filing office pursuant to the provisions of the Uniform Federal Lien Registration Act (§ 55-142.1 et seq. of the Code of Virginia) shall be treated as the most analogous UCC record unless the Uniform Federal Lien Registration Act or federal law provides otherwise.

**Part II**

**UCC Record Requirements**

**5VAC5-30-50. Acceptance and refusal of UCC records; continuation statements.**

A. The duties and responsibilities of the filing office with respect to the administration of the UCC are ministerial. In accepting for filing or refusing to file a UCC record pursuant to this chapter, the filing office does none of the following:

1. Determine the legal sufficiency or insufficiency of a UCC record;
2. Determine that a security interest in collateral exists or does not exist;
3. Determine that information in the UCC record is correct or incorrect, in whole or in part; or
4. Create a presumption that information in the UCC record is correct or incorrect, in whole or in part.

B. The first day on which a continuation statement may be filed is the day of the month corresponding to the date upon which the related financing statement would lapse in the sixth month preceding the month in which the financing statement would lapse. If there is no such corresponding date, the first day on which a continuation statement may be filed is the last day of the sixth month preceding the month in which the financing statement would lapse. The last day on which a continuation statement may be filed is the date upon which the financing statement lapses. If the lapse date falls on a Saturday, Sunday, or other day on which the filing office is not open, then the last day on which a continuation statement may be filed, if ~~tendered~~ delivered to the filing office for filing by personal, courier, or postal delivery, is the last day the filing office is open prior to the lapse date. An authorized electronic delivery method may be available to file a

continuation statement on a Saturday, Sunday, or other day on which the filing office is not open. The relevant anniversary for a February 29 filing date shall be March 1 in the fifth or 30th year following the date of filing.

C. Except as provided in 5VAC5-30-40 D, if the filing office finds grounds to refuse a UCC record for filing, including those set forth in § 8.9A-516 (b) of the Code of Virginia, the filing office shall return the UCC record to the remitter and may retain the filing fee.

D. Nothing in this chapter shall prevent the filing office from communicating to a filer or a remitter that the filing office noticed apparent potential defects in a UCC record, whether or not it was filed or refused for filing. However, the filing office is under no obligation to do so and may not, in fact, have the resources to identify potential defects. The responsibility for the legal effectiveness of filing rests with filers and remitters and the filing office bears no responsibility for such effectiveness.

E. The filing office may act in accordance with § 12.1-19 B of the Code of Virginia with respect to submissions that contain personal identifiable information.

F. ~~If a secured party or a remitter demonstrates to the satisfaction of the filing office that a UCC record that was refused for filing should not have been refused, the filing office shall file the UCC record as provided in this chapter with a filing date and time assigned when the record was originally tendered for filing.~~ If it is determined that the filing office refused to accept [ the a UCC ] record in error, the filing office shall file the UCC record with the filing date and time that were assigned, based on the method of delivery, by the filing office after the record was originally delivered to the filing office for filing. The filing office shall also file a filing officer statement that states the effective date and time of filing, which shall be the date and time the UCC record was originally ~~tendered~~ delivered to the filing office for filing.

### Part III

#### UCC Record Filing and Searches

#### **5VAC5-30-60. Filing and data entry procedures.**

A. The filing office may correct errors made by its personnel in the UCC information management system at any time. ~~If the correction occurs after the filing office has issued a certification, the~~ The filing office shall file a filing officer statement in the UCC information management system identifying the UCC record to which it relates, the date of the correction or other action taken, and ~~explaining the nature~~ an explanation of the corrective or other action taken. ~~The record~~ filing officer statement shall be preserved as long as the UCC record of the initial financing statement is preserved in the UCC information management system.

B. An error by a filer or remitter is the responsibility of that person. It can be corrected by filing an amendment or it can be disclosed by filing an information statement pursuant to § 8.9A-518 of the Code of Virginia.

C. 1. A UCC record ~~tendered~~ delivered to the filing office for filing shall designate whether a name is a name of an individual or an organization. If the name is that of an individual, the surname, first personal name, additional name or names, and any suffix shall be given.

2. Organization names are entered into the UCC information management system exactly as set forth in the UCC record, even if it appears that multiple names are set forth in the UCC record or if it appears that the name of an individual has been included in the field designated for an organization name.

3. The filing office will only accept forms that designate separate fields for individual and organization names and separate fields for the surname, first personal name, additional name or names, and any suffix. Such forms diminish the possibility of filing office error and help assure that filers' expectations are met. However, the inclusion of names in an incorrect field or the failure to transmit names accurately to the filing office may cause a financing statement to be ineffective.

D. The filing office shall take no action upon receipt of a notification, formal or informal, of a bankruptcy proceeding involving a debtor included in the UCC information management system.

**5VAC5-30-70. Search requests and reports.**

A. The filing office maintains for public inspection a searchable index for all UCC records. The index shall provide for the retrieval of all filed UCC records by the name of the debtor and by the file number of the initial financing statement.

B. Search requests shall be made only on the Information Request form (Form UCC11) and shall include:

1. The name of the debtor to be searched, specifying whether the debtor is an individual or organization. A search request will be processed using the exact name provided by the requestor.
2. The name and address of the person to whom the search report is to be sent.
3. Payment of the appropriate fee, which shall be made by a method set forth in this chapter.

C. Search requests may include:

1. A request that copies of UCC records found in the search be included with the search report, and
2. Instructions on the mode of delivery desired, if other than by postal delivery, which shall be followed if the desired mode is acceptable to the filing office.

D. Search results are produced by the application of standardized search logic to the name presented to the filing office. The following criteria apply to searches:

1. There is no limit to the number of matches that may be returned in response to the search request.
2. No distinction is made between upper and lower case letters.
3. Punctuation marks and accents are disregarded.
4. "Noise words" are limited to "an," "and," "for," "of," and "the." The word "the" is disregarded. Other noise words appearing anywhere except at the beginning of an organization name are disregarded. Certain business words are modified to a standard abbreviation: company to "co," corporation to "corp," limited to "ltd," incorporated to "inc."
5. All spaces are disregarded.
6. After using the preceding criteria to modify the name to be searched, the search will reveal names of debtors that are contained in unexpired or all initial financing statements in an alphabetical list.

E. Reports created in response to a search request shall include the following:

1. The date and time the report was generated.
2. Identification of the name searched.
3. The through date as of the date and time the report was generated.

4. For an organization, the name as it appears after application of the standardized search logic.
5. Identification of each unexpired initial financing statement or all initial financing statements filed on or prior to the report date and time corresponding to the search criteria, by name of debtor, by file number, and by file date and file time.
6. For each initial financing statement on the report, a listing of all related UCC records filed by the filing office on or prior to the report date.
7. Copies of all UCC records revealed by the search and requested by the requestor.

F. The filing office may provide access to the searchable index via the Internet that produces search results beyond exact name matches. Search results obtained via the Internet shall not constitute an official search and will not be certified by the filing office.

**5VAC5-40-10. Fees to be charged by the commission.**

A. The Office of the Clerk shall charge and collect a fee of \$6.00 for each certificate of fact provided pursuant to § 12.1-20 of the Code of Virginia.

B. The commission shall charge and collect for furnishing ~~and certifying a paper copy of any document, instrument, or paper or any information from its records \$ .50 per page and \$3.00 for the certificate and affixing thereto the seal of the commission or a facsimile thereof~~ a fee as set forth in this subsection.

1. If the number of pages is 25 or fewer, no charge.
2. If the number of pages is between 26 and 50, \$10.
3. If the number of pages is 51 or more, \$20.

If the commission receives two or more requests for copies of documents or information that it reasonably believes are intended to evade the payment of the charge for furnishing a copy, the requests may be aggregated and treated as a single request.

C. For certifying a paper copy, the commission shall charge and collect \$6.00 for the certificate and affixing thereto the seal of the commission or a facsimile thereof.

D. The commission may charge and collect reasonable fees:

1. For providing records from a computer database, an electronic data processing system, or any other structured collection of data; or
2. For abstracting or summarizing data or creating a record that does not already exist, if the commission chooses to fulfill a request for same.